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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

New York, N.Y.

4 v.

13 Cr. 0811(ALC)

5 GUILLERMO ARAUJO,

6 Defendant.

7 -----x

8 July 1, 2015

9 2:43 p.m.

10 Before:

11 HON. ANDREW L. CARTER, JR.,

12 District Judge

13  
14 APPEARANCES

15 PREET BHARARA

16 United States Attorney for the  
17 Southern District of New York

BY: RUSSELL CAPONE

Assistant United States Attorney

18 DAVIS POLK & WARDWELL L.L.P.

Attorneys for Defendant

19 BY: MARTINE M. BEAMON

JAMIE BAGLIEBTER

20 RACHELLE NAVARRO

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1 THE CLERK: Criminal cause for a sentencing in case  
2 number 13 Cr. 811, United States v. Guillermo Araujo.

3 Counsel, please state your appearance for the  
4 government.

5 MR. CAPONE: Russell Capone for the government. Good  
6 afternoon, your Honor.

7 THE CLERK: And for the defendant.

8 MS. NAVARRO: Your Honor, Rachelle Navarro for the  
9 defendant. I will also note that Ms. Martine Beamon is just  
10 downstairs and she is held up coming up. So if we could just  
11 wait a movement?

12 THE COURT: OK.

13 MS. NAVARRO: Apologies on that.

14 THE COURT: All right.

15 (Pause)

16 MS. BEAMON: Your Honor, my apologies.

17 THE COURT: OK.

18 OK. Good afternoon Mr. Araujo.

19 THE DEFENDANT: Good afternoon, your Honor.

20 THE COURT: OK. Are the parties prepared to go  
21 forward with sentencing today?

22 MR. CAPONE: Yes, your Honor.

23 MS. BEAMON: Yes, your Honor.

24 THE COURT: Where we left off the last time is that  
25 there was a legal issue that still needed to be dealt with

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1 regarding time that Mr. Araujo has spent in custody in state  
2 court, specifically time that he spent for two sentences  
3 previously imposed as well as the time that he has been in on a  
4 writ from the state.

5 I want to just try to get clarification from the  
6 defense as to specifically what it is that you are asking me to  
7 do. On April 1st you asked me to give him -- I understand that  
8 your basic position is you want me to give him credit or to  
9 make sure that he doesn't do double time, and I understand  
10 that. But the language that was used in the April submission,  
11 you talk about credit, and in the Bureau of Prisons' "credit"  
12 has a very specific sort of meaning. Credit can only be given  
13 by the Bureau of Prisons. I understand what you are asking me  
14 to do generally, but there is a difference in terms of how I  
15 can make sure that he doesn't do time for his state conviction  
16 and his federal conviction consecutively for the same relevant  
17 conduct, and it seems that perhaps your position has changed  
18 from April.

19 In April, you had indicated that there were two  
20 sentences, for 18 months and 10 months, respectively, that were  
21 discharged sentences, and under the guidelines there is a  
22 difference as to how I make any changes to the guideline range  
23 or to his ultimate sentence based on whether or not the terms  
24 that we're talking about, in terms of state court, were  
25 discharged sentences or for an undischarged sentence. Earlier,

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1 I had understood that you were taking the position that there  
2 were a total of 28 months that there needed to be some sort of  
3 modification based on an 18-month sentence that was discharged  
4 and a 10-month sentence that was discharged, and you also  
5 wanted to get some sort of modification for the time that he  
6 had spent here on a writ.

7 In your most recent submission as of yesterday, you  
8 are indicating that there is 18 months for a discharged 2008  
9 conviction and 33 months for an undischarged 2012 conviction.  
10 So I understand what you are asking me to do is to make sure  
11 that that 51-month period of time, that there is some  
12 modification to reflect that. But am I correct in -- let me  
13 just get clarification from you as to what your position is  
14 regarding the 2012 conviction. Is it that there are 10 months  
15 that have been discharged and then there is another portion  
16 that is undischarged, or is your position now that it is all  
17 undischarged? What is your position exactly?

18 MS. BEAMON: Can I have one moment, your Honor?

19 THE COURT: Yes.

20 (Pause)

21 MS. BEAMON: So, your Honor, if I may? First, to  
22 answer your specific question, it is our view that the 2008  
23 conviction is fully discharged, but the 2012 conviction is  
24 undischarged even though some portion of the time has already  
25 been served. And I think the way that we spoke about it, your

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1 Honor, previously was that conceptually -- and I think it was  
2 your Honor's suggestion to break it down this way -- there were  
3 three distinct tranches of time. The first was the time that  
4 Mr. Araujo served for the 2008 conviction, and that was 18  
5 months. Then with respect to the 2012 conviction, there are  
6 two portions. One is the time that he has already served, and  
7 that we know is now 14 months, your Honor, and then the time  
8 that he has spent in federal custody while on the writ, and  
9 that is now, just by the passage of time, 19 months.

10 THE COURT: OK.

11 MS. BEAMON: But the entirety -- we believe that the  
12 way that the guidelines discuss this and the way that the case  
13 law reads is because there is still time remaining on his 2012  
14 conviction as a result of the parole violation is that you call  
15 that whole conviction undischarged even though some portion of  
16 the time has been served.

17 THE COURT: All right. Government have any position  
18 on this?

19 MR. CAPONE: Your Honor, having looked at it, I think  
20 we do agree as to the 2012 conviction under the guidelines,  
21 since it is an undischarged conviction, that whatever ultimate  
22 guidelines' range your Honor concludes is appropriate, that the  
23 sentence can be adjusted -- the guidelines' range can be  
24 adjusted to reflect those 33 months.

25 The 2008 conviction is fully discharged. So while

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1 there may be a 3553(a) argument, I don't think that any actual  
2 guidelines' adjustment is warranted.

3 THE COURT: OK. Tell me a little bit more. What do  
4 you mean by that, Mr. Capone?

5 MR. CAPONE: Well, Section 5G1.3(b)(1) of the  
6 guidelines, which I think is the relevant section, talks about  
7 adjusting the sentence for undischarged terms of imprisonment.  
8 2008 is fully discharged. So I just don't think this provision  
9 is applicable.

10 THE COURT: Correct. What is your position on what  
11 would be applicable?

12 MR. CAPONE: As to the 2008 conviction?

13 THE COURT: Yes.

14 MR. CAPONE: Nothing, your Honor. I mean, the defense  
15 may have again a 3553(a) argument that he has served some time  
16 for this relevant conduct, but I don't know that a guideline --  
17 I don't think any adjustment under the guidelines is  
18 appropriate. I don't see it here in 5G1.3.

19 THE COURT: Right. It is not in 5G1.3, but does  
20 defense counsel have any take on that?

21 MS. BEAMON: Yes, your Honor. With respect to 2008,  
22 we think that the operative provision is 5G1.3 and it's  
23 Application Note 5.

24 Your Honor, we are prohibited, I want to make clear,  
25 from our plea agreement from making a downward departure

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1 request, but I believe that the same criteria apply for a  
2 request under 3553(e), and my request is under that provision.  
3 But using this Application Note 5 as guidance, it provides that  
4 in the case of a discharged term of imprisonment, a downward  
5 departure is not prohibited if the defendant (1) has completed  
6 serving a term of imprisonment and (b) -- Subsection (b) would  
7 have provided an adjustment had that completed term of  
8 imprisonment been undischarged at the time of sentencing in the  
9 instant offense.

10 And we believe that if your Honor turns back to  
11 5G1.3(b), that Subsection (b) would have applied. This is  
12 relevant conduct to the instant offense. There is no  
13 disagreement about that with the government. And it is our  
14 understanding, based on a reading of 5G1.3(b), that this is  
15 precisely the type of adjustment that can be made to a sentence  
16 because it is relevant conduct.

17 THE COURT: OK. I believe that there is -- and I  
18 guess I'll give the parties notice of this if the parties feel  
19 that they didn't have notice of this. I feel there is another  
20 section of the guidelines that would apply specifically to the  
21 2008 conviction, and that's Section 5K2.23, which deals with  
22 discharged terms of imprisonment. And that's why -- while I  
23 understand the parties' basic argument here is to the fact that  
24 there needs to be a modification, I need to make sure that any  
25 modification that is made is made appropriately.

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1           5G1.3 is mandatory and it talks about an adjustment.  
2       Again, the word "adjustment" is used very specifically there  
3       for a particular circumstance, which I don't think the 2008  
4       conviction applies to 5G1.3. I do think that it's applicable  
5       to 5K2.23 as a discharged term of imprisonment, which is not  
6       mandatory, but I have the authority to downwardly depart in my  
7       discretion under 5K2.23.

8           So I guess I will give the parties notice of that if  
9       the parties wish to -- need some time to about that some more.  
10      But it seems to me that the 2008 conviction would squarely fit  
11      under 5K2.23. It very well may be that the portion of the 2012  
12      conviction that has already been served also fits under 5K2.23,  
13      and then for the remainder of the sentence that is  
14      undischarged, then we're talking about potentially 5G1.3.

15           But do the parties need any time to look into that or  
16      think about that?

17           MS. BEAMON: Not the defense, your Honor. And we note  
18      that the Application Note from which I was just reading under  
19      5G1.3, Application Note 5, makes specific reference to 5K2.23.  
20      So we are on all fours with your Honor with respect to the  
21      application of that note -- of that note and that section,  
22      5K2.23.

23           THE COURT: And counsel for the government?

24           MR. CAPONE: Yes, your Honor. I don't think we need  
25      any more time. That makes sense to me. I understand that your



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1 Honor can take the 2008 conviction into consideration as a  
2 result of this provision.

3 I would note that both of these convictions are for  
4 two burglaries. The amount of burglaries at issue here is far  
5 more than two. This is a small, small -- while it may be  
6 significant in terms of the time he spent in prison, it is a  
7 small portion of the burglaries that he committed. In fact,  
8 the PSR references 21 burglaries committed by the defendant,  
9 every single one of which is after both the 2008 and the 2010  
10 conviction. So I agree your Honor can take it into account,  
11 but what weight it's worth, I'm not sure it is worth that much  
12 weight in light of the repeated burglaries after both  
13 convictions.

14 THE COURT: OK. What is the parties' position on the  
15 portion -- the 14 months that have been served on the 2012  
16 conviction and whether 5K2.23 applies or 5G1.3 or neither,  
17 both? What are the parties' position on that?

18 MS. BEAMON: Your Honor, it remains our view that it  
19 is undischarged even though some portion of it has already been  
20 served, and that is because time remains on that charge.

21 THE COURT: The government take any position on this?

22 MR. CAPONE: That seems correct, your Honor.

23 THE COURT: All right. I will be right back. Let me  
24 think about this for a moment.

25 MS. BEAMON: Yes, your Honor.

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(Recess)

THE COURT: OK. I believe also where we left off the last time, that I had determined the guideline range that applies to this case; is my recollection correct?

MS. BEAMON: That is correct, your Honor.

MR. CAPONE: Yes, your Honor.

THE COURT: Ant that it was 87 to 108 months, is that correct?

MS. BEAMON: Yes, your Honor.

MR. CAPONE: Yes, your Honor.

THE COURT: So I will -- and, again, since 5K2.23 is technically a departure, as opposed to a variance, under 18 U.S.C. 3553(a), does the government wish to have an adjournment or any more time to respond to that in terms of --

MR. CAPONE: No, your Honor.

THE COURT: OK. Does the defense?

MS. BEAMON: No, your Honor.

THE COURT: OK. All right. So I will make the modification. I will downwardly depart under 5K2.23 and subtract the 18 months of the discharged sentence for 2008 from the guideline range. I will also, under 5G1.3, make an adjustment for the other 33 months of the undischarged term that he has served for the 2012 conviction. Resulting in a total modification -- the combination of a downward departure and an adjustment -- of 51 months, resulting in a guideline

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1 range of 36 to 57 months. Is my math correct?

2 MS. BEAMON: Yes, your Honor.

3 MR. CAPONE: I think so, your Honor.

4 THE COURT: OK. I will hear from the parties  
5 regarding any issues they wish to raise regarding the  
6 appropriate sentence in this case, starting with defense  
7 counsel.

8 MS. BEAMON: Thank you, your Honor.

9 I will not repeat all of the arguments that we made in  
10 our sentencing submission, which I know the Court is more than  
11 familiar with.

12 I do think -- this, your Honor, is my last case on the  
13 CJA Panel. I have been on the panel for -- I think three terms  
14 of three years -- I think nine years, your Honor, and maybe a  
15 little bit longer, since this is at the very tail end of my  
16 service. And while I have had many, many matters where  
17 individuals had been born into terrible circumstances, I have  
18 to say that I have not seen the type of addiction at such an  
19 early age as I have seen with Mr. Araujo.

20 And I offer that, your Honor, as I hope we make clear  
21 in our sentencing submission, not as a matter of excuse but as  
22 a matter of explanation. It has seemed to me, since we have  
23 been working with Mr. Araujo, that so much of his development  
24 really stopped at age 12 or 11, when he began using drugs, and  
25 that his judgment really from then on was really terribly

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1     impaired and he really did set upon a downward spiral where he,  
2     you know, could not succeed in school and ultimately I think it  
3     led to the life that has resulted in his presence here today.

4             Again, your Honor, it is not by way of excuse.  
5     Mr. Araujo himself, we think quite eloquently in his letter,  
6     has indicated that he should have made better choices and takes  
7     full responsibility for his conduct. But, you know, it is our  
8     view that his addiction played a dramatic role in how he comes  
9     before the Court today.

10            And so, your Honor, while we absolutely are of the  
11     view that this conduct was serious and that Mr. Araujo is very  
12     sorry for his behavior and takes full responsibility for his  
13     behavior, we do believe that all of the circumstances of his  
14     life and the offenses does suggest that he should be receiving  
15     a sentence, respectfully, at the low end of the guidelines'  
16     range.

17            THE COURT: OK. Let me hear from the government.

18            MR. CAPONE: Your Honor, I don't have too much to add.

19            My understanding is that Mr. Masimore spoke in terms  
20     of the government's view on sentencing at the last proceeding,  
21     and I understand and agree with the guidelines' adjustments.

22            Again, I just wanted to make sure the Court is aware  
23     that these are two burglaries in a long line of burglaries,  
24     most of which were committed after the previous convictions and  
25     sentences of -- the sentences of two, three and four years did

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1 nothing to deter the defendant from committing burglary after  
2 burglary after burglary. So I do think a significant sentence  
3 for deterrence's sake is important.

4 THE COURT: Thank you.

5 Let me ask defense counsel, just if you can, to  
6 comment on that, because it does seem that -- I certainly  
7 doesn't wish to minimize his addiction, but he certainly seems  
8 to be -- to the extent he is an addict, he seems to be a  
9 functioning addict and he seems to be functioning primarily as  
10 a burglar, starting at the age of 16. So he seems to have  
11 specialized in committing burglaries. That is sort of his  
12 second job or maybe even his primary job in addition to  
13 welding. He does have a skill as a welder. He was employed as  
14 a welder and still engaged in this conduct and, again, seems to  
15 have specialized in this conduct.

16 Can you just address that?

17 MS. BEAMON: Sure, your Honor. First, with respect to  
18 the timeline, if I can just make sure I have it correct.  
19 Because our view is that, really, a dramatic change came about  
20 in Mr. Araujo's life after the Shock Incarceration Program that  
21 he underwent. And that actually occurred beginning in 2012.  
22 So the robberies for which he was convicted was in 2010, but he  
23 was not sentenced until 2012, your Honor, and he has committed  
24 no pharmacy burglaries since that time.

25 And it was really critical from our perspective and

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1 from the perspective of all of those with whom we spoke who are  
2 in Mr. Araujo's life that following Shock, he had a real  
3 change, a dramatic change. And at the time he stopped using  
4 drugs, it was a real shock to his system -- no pun intended --  
5 as we put in our letter, because it gave him, frankly,  
6 structure and self-confidence that he had never had before.

7 And while, your Honor, Mr. Araujo did work from time  
8 to time in his father's garage, he is not a trained welder,  
9 from my understanding, and his relationship with his father is  
10 quite complicated, your Honor. I think we lay out some of that  
11 in our sentencing submissions. But it was not the type of  
12 relationship in which he was brought along to have a job in his  
13 dad's shop, the way that some family businesses operate.

14 And I think, your Honor, it is fair to say that during  
15 this entire period he was functioning, to the extent that, with  
16 others, he was able to participate in the burglary conspiracy,  
17 but he was not functioning, frankly, your Honor, in any other  
18 way. And we detailed what his days were like. He would get up  
19 and smoke marijuana. He would meet up with pals. He would get  
20 something to eat. He really was not someone who had any  
21 structure about him. He didn't function in any way that we are  
22 all familiar with as members -- functioning members of society.

23 So we think that the turning point for Mr. Araujo was  
24 really with the Shock Program, where he had the first taste and  
25 first experience since he had dropped out of school of any

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1 structure in his life whatsoever, and it was the first time  
2 that he really saw what he could do with himself and how he  
3 could function without drugs.

4 So we don't think that it is a fair argument to make  
5 that the other sentences, that he didn't learn anything from  
6 his other sentences. In fact, he learned a great deal,  
7 particularly with respect to the 2012 program, which, really,  
8 we think was a dramatic life event.

9 THE COURT: OK. I'm not so much focusing on --  
10 obviously, I'm focusing on all of the prior sentences. I'm not  
11 so much focusing on the 2012 or even the 2008. But starting  
12 back in 2005, at the age of 16, he had a youthful offender  
13 adjudication for a burglary and then in September of 2007  
14 another burglary. And it seems, again, that that's something  
15 that he specialized in doing and as a young person who was able  
16 to carry off these burglaries relatively successfully.

17 So I guess what I'm curious to hear is when he gets  
18 out what is going to be different? At the time that all of  
19 this is happening, he has a child and he's a stepfather to his  
20 other child, he had a job. And that wasn't enough motivation  
21 for him to try to put some structure in his life himself. My  
22 concern is not so much how he reacts when he's in the Shock  
23 Program at Willard or when he is in jail but how is he going to  
24 react when he's out and he has these temptations, driven by  
25 whatever desire they are driven by, to commit burglaries or to

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1 commit these other crimes instead of working and trying to be  
2 there to support his family?

3 MS. BEAMON: Your Honor, we and Mr. Araujo have spent  
4 a great deal of time talking through exactly what his plan will  
5 be, what he wants to do, what he wants to make of his time in  
6 incarceration and what he wants to do next. We think that  
7 critical to his plan going forward -- and it's something that  
8 he suggested, was absolutely driven by Mr. Araujo -- and that  
9 is that he can not return to the neighborhood in which he grew  
10 up. And I think that that's a very difficult thing to say, to  
11 admit to yourself that you can't be part of that same  
12 environment. But that is -- that was at his own insistence,  
13 something that he wanted to do. He wanted to move away -- he  
14 wants to move away from the neighborhood. He wants to take his  
15 son away from the neighborhood.

16 And his son, your Honor, just to clarify, is only 3  
17 years old now and was born only shortly before went into the  
18 Shock Program. And I think that he has -- I think that Shock  
19 helped him realize how important it was for him to be a father.  
20 And as we note in the submission, he has taken courses at  
21 MDC -- and they have limited course offerings, but just about  
22 the effect of incarceration on children. So I think that has  
23 prompted him to do a great deal of soul searching about what he  
24 wants to do.

25 So that is step one in terms of not falling back into



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1 the same behavior. He has managed to stay drug-free even upon  
2 release from Shock. But now the question is how does he take  
3 that and leverage it to a better future. He thinks the first  
4 step I think has to be leaving the neighborhood.

5 You know, he certainly has talked about whether or not  
6 he will go back to welding and whether or not he will try to  
7 work at his father's shop. That opportunity is open to him.  
8 And he has that and he would -- he has that as one possibility  
9 that he is considering. But, your Honor, we don't want -- and  
10 I think Mr. Araujo will tell you that he's not sure that that  
11 makes the most sense for him, that it might be more  
12 profitable -- I don't mean from a financial perspective but,  
13 really, it may be a better situation for him not to even be  
14 back in that same environ, but it does give him a ready  
15 opportunity to have a job right out of his release.

16 And he's also talked about being involved with car  
17 service. He very much would like to be involved in a car  
18 service. As we all know, there are more opportunities now to  
19 do that as a result of some of the technological advances, and  
20 he was hoping that that might give him an opportunity to get on  
21 his feet and be involved in a new business.

22 He's also contemplating whether he should return to  
23 school. He has been attempting to get his GED, your Honor.  
24 And then depending on where he is located, he will have  
25 opportunities to either do vocational or further education

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1 training.

2 So while we do not have a set plan for Mr. Araujo upon  
3 his release, he has several opportunities for jobs and several  
4 ideas about how he wants to actually progress.

5 THE COURT: OK. And how is Mr. Araujo going to -- I  
6 understand he takes the position he wants to move away from the  
7 neighborhood, take his son away from the neighborhood, and  
8 that's fine if he chooses to do that. It seems to me that,  
9 based on the information that I have, it's going to be  
10 impossible for him to avoid the neighborhood. The welding shop  
11 is owned by his aunt. His father works there, and the mother  
12 of his child is a secretary at that welding shop. So can you  
13 tell me how he's going to avoid it? It can't be as simple as,  
14 well, if I'm in the neighborhood I'm just going to just fall  
15 back into this sort of behavior. Can you tell me more about  
16 that?

17 MS. BEAMON: Sure, your Honor. I don't mean to  
18 suggest that just by going back to the neighborhood, he will.  
19 We think Mr. Araujo is very proud of the fact that after his  
20 release from the Shock Program he did not return, for example,  
21 to using drugs. And that is right back in the neighborhood,  
22 right back in the environs. So he has absolutely shown  
23 tremendous self-restrain.

24 I think his goal would be to move out of the  
25 neighborhood because it is just -- from his perspective, it is

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1 not the best environment for him or his son to be in just  
2 because of the lure of some of those things and because of his  
3 peers, who have been in the neighborhood and with whom he grew  
4 up.

5 We are not suggesting that the move has to be a  
6 dramatic move across country or, you know, to some far-flung  
7 location, but even the matter of a few neighborhoods away,  
8 where he can come to the welding shop as necessary, if that is  
9 where his job is going to be. If his son remains located in  
10 that area, he can come and visit. But it will not be his  
11 entire community. And we don't think that that's without  
12 difficulties, your Honor, but his family has pledged its  
13 support to assist him in this endeavor.

14 And so we think that it can be really small steps but  
15 enough just to get him away from the situation in which he  
16 found himself.

17 THE COURT: OK. Thank you.

18 Anything else from the government?

19 MR. CAPONE: No, your Honor.

20 THE COURT: OK. Mr. Araujo, if you would like, I will  
21 give you an opportunity to address me. You can say anything  
22 you want regarding sentencing. You don't have to say anything,  
23 but if you would like, I will give you an opportunity.

24 THE DEFENDANT: Yes, sir.

25 Good afternoon, your Honor. Thank you for giving me a

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1 chance to speak, sir.

2 First I would like to say I'm sorry to everyone here,  
3 especially to all the business owners who work hard every day  
4 just to provide the services to our community. I'm sorry I  
5 caused loss and aggravation. Please forgive me.

6 Also, I would like to apologize to my family for all  
7 the stress I put on them. Thank you for being the best parents  
8 anyone could ever ask for. I would like to say thank you to my  
9 girlfriend and my family for supporting me and coming to see me  
10 at the MDC Brooklyn facility, where I have been incarcerated  
11 for the last three years.

12 The consequences of these crimes saved my life in many  
13 good ways, your Honor. While serving the first part of this  
14 sentence at the Monterey Shock Program, I learned so much about  
15 myself that I never knew existed. And when I first got to the  
16 program, my attitude was cheap and lousy, and for the most  
17 part, your Honor, I thought boot camp wasn't for me. I also  
18 thought that I could just breeze right through the six-month  
19 course and get back on my former lifestyle. Your Honor, this  
20 wasn't the case, and I experienced what is called a rude shock  
21 awakening.

22 The military training was the balance I needed to  
23 become the person I am today. The lesson learned there was  
24 that everything in life has its process. But through sweat,  
25 dedication and persistence, anything I put myself out, progress

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1 will eventually follow. Your Honor, these are the same  
2 principles that I intend to employ in my everyday release.

3 Life, now upon my release, as I now focus and will  
4 have the opportunity of maintaining a family-owned business  
5 that will help find my parental skills so that I would be able  
6 to set the right example for my children and I could provide  
7 the support and education so that they could be successful for  
8 this community without the trials and tribulations that I went  
9 through in my unguided youth for years.

10 One again, your Honor, I consider this speech as a new  
11 brighter start now awaits me.

12 Thank you, your Honor, so much for giving me a chance  
13 to speak. You may proceed with sentencing, sir.

14 THE COURT: OK. Thank you.

15 I will give defense counsel -- if you would like, I  
16 will give an opportunity if there is any family that you would  
17 like to call as a witness to address me, I will give you an  
18 opportunity to call one member, if you would like.

19 MS. BEAMON: Your Honor, at our previous sentence one  
20 of Mr. Araujo's family members spoke, and we don't think that  
21 we need require any further on that, your Honor.

22 THE COURT: OK. Thank you.

23 Anything else from the government?

24 MR. CAPONE: No, your Honor. Thank you.

25 THE COURT: OK. I'll be right back.

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(Recess)

THE COURT: You may be seated.

MS. BEAMON: Your Honor, if I might, there was one item that I forgot to mention to your Honor.

THE COURT: OK.

MS. BEAMON: If I could an approach? I have given a copy to the government. This is a copy of a work performance rating. It is just from Mr. Araujo's work as an inmate. This is his performance rating, and he was hopeful that your Honor could look at it.

THE COURT: All right.

(Handing to the Court)

MS. BEAMON: Thank you very much.

(Pause)

MS. BEAMON: I think that what your Honor will see is that Mr. Araujo has worked very diligently at his job as an orderly, and he's gotten all very good, goods and outstandings for his job and he's very proud, and we think that this, further to your Honor's questions, shows the industriousness and the willingness to do just very basic hard work that is required in order to better oneself, and Mr. Araujo reminded me that he thinks this demonstrates how hard he is going to work when he leaves.

THE COURT: OK. Has the government had an opportunity to look at this?

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1 MR. CAPONE: Yes, your Honor.

2 THE COURT: OK. Are the parties ready for sentencing?

3 MS. BEAMON: Yes, your Honor. Thank you.

4 THE COURT: Is there any reason why sentence should  
5 not be imposed?

6 MR. CAPONE: No, your Honor.

7 MS. BEAMON: No, your Honor.

8 THE COURT: Mr. Araujo, are you satisfied with your  
9 legal representation up to this point?

10 THE DEFENDANT: Yes, your Honor.

11 THE COURT: OK. I recognize that I have the authority  
12 to downwardly depart, and I have already done so in this  
13 matter. I recognize that I have the authority to further  
14 downwardly depart and that I have the authority to vary under  
15 the guidelines. I don't believe any further departure or  
16 variance is appropriate for this case.

17 In terms of forfeiture, what is the government's  
18 position on forfeiture?

19 MR. CAPONE: If I can just have one second, your  
20 Honor?

21 (Pause)

22 My understanding, your Honor, is that there was a  
23 forfeiture order executed and handed up at the first  
24 proceeding.

25 THE COURT: OK. The forfeiture order was executed

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1 previously and I did grant that.

2           Regarding restitution, is the government seeking any  
3 restitution in this matter?

4           MR. CAPONE: No, your Honor.

5           THE COURT: I will impose the special assessment for  
6 Counts One and Two of \$200.

7           I will not impose a fine.

8           In terms of supervised release, I will impose a term  
9 of three years supervised release for each count, Counts One  
10 and Two, to run concurrently with each other.

11           I will impose the mandatory conditions of supervised  
12 release. In addition, I will impose the standard conditions of  
13 supervision with the following special conditions:

14           That the defendant will participate in a program  
15 approved by the United States Probation Office which program  
16 may include testing to determine whether he has reverted to  
17 using drugs or alcohol. The Court authorizes the release of  
18 available drug treatment evaluations and reports to the  
19 substance abuse treatment provider, as approved by the  
20 probation officer. The defendant will be required to  
21 contribute to the cost of services rendered in an amount  
22 determined by the probation officer based on the ability to pay  
23 or availability of third-party payment.

24           I will also impose the search condition: That the  
25 defendant shall submit his person, residence, place of



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1 business, vehicle, or any other premises under his control to a  
2 search on the basis that the probation officer has reasonable  
3 belief that contraband or evidence of a violation of the  
4 conditions of release may be found. The search must be  
5 conducted at a reasonable time and in a reasonable manner.  
6 Failure to submit to a search may be grounds for revocation.  
7 The defendant shall inform any other residents that the  
8 premises may be subject to search pursuant to this condition.

9 The defendant should report to the nearest Probation  
10 Office within 72 hours of release from custody, and he should  
11 be supervised by the district of residence.

12 Regarding the term of custody, as I previously  
13 indicated, after the downward departure and adjustment, there  
14 is a nonbinding guideline range of 36 to 57 months. As I  
15 indicated, I recognize the authority to further downwardly  
16 depart or upwardly depart and the authority to vary. I don't  
17 believe that that is appropriate in this case.

18 I am going to sentence Mr. Araujo to a term of custody  
19 of 41 months for Counts One and Two to be served concurrently  
20 with each other.

21 I believe there is also a request by the defense that  
22 the sentence for the federal case should be run concurrently  
23 with the sentence for the state case since this is relevant  
24 conduct. I believe that the government does not object to that  
25 but I wanted to make sure. Is there any position of the

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1 government on that?

2 MR. CAPONE: No. That is correct, your Honor.

3 THE COURT: OK. And I will impose the terms -- those  
4 two terms -- concurrent with the state sentence -- with the  
5 undischarged state sentence.

6 Are there any open counts?

7 MR. CAPONE: Yes, your Honor. The government moves to  
8 dismiss them.

9 THE COURT: OK. That is granted.

10 Mr. Araujo, I wish you the best of luck in dealing  
11 with your addiction. I wish you the best of luck in terms of  
12 trying to make better decisions in terms of not only who you  
13 hang out with but how you live your life, and I hope that you  
14 are able -- as you have indicated, that you are able to stay  
15 focused and be there for your family and be there for yourself.  
16 You have a lot of people here in this courtroom who support you  
17 and they have written lots of letters on your behalf, and, as  
18 indicated, the last time you were here, you had someone come up  
19 and speak on your behalf. So you will have a lot of community  
20 support. But you are going to have to do this on your own, a  
21 large part of this. And when you feel that temptation, you are  
22 going to have to figure out a way to avoid yielding to it.

23 So I do wish you the best of luck.

24 Let me ask counsel, since there has been reference to  
25 Mr. Araujo's drug addiction, my understanding is that he is in

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1 state custody. Is there any request regarding any sort of drug  
2 treatment or the like to the extent that he ends up in federal  
3 custody?

4 MS. BEAMON: There is, your Honor. We have done  
5 extensive research as to whether or not Mr. Araujo is eligible  
6 for the RDAP program, with which I know your Honor is very  
7 familiar. We would request that Mr. Araujo be considered --  
8 that your Honor recommend Mr. Araujo for consideration for the  
9 RDAP program.

10 We have spoken to BOP directly. It is not entirely  
11 clear that he will qualify for it because of his period of  
12 sobriety, your Honor. But having worked through it with the  
13 Bureau of Prisons, we think that the best course is to request  
14 that your Honor recommend it, and that if they determine that  
15 he is not eligible because of his period of sobriety since the  
16 Shock Incarceration Program, that he nonetheless be considered  
17 for other drug treatment programs while incarcerated.

18 THE COURT: OK. Counsel for the government, any  
19 position on that?

20 MR. CAPONE: No objection to that, your Honor.

21 THE COURT: OK. So I will make that recommendation to  
22 the Bureau of Prisons.

23 That is the sentence of the Court.

24 Mr. Araujo, you have a statutory right to appeal. If  
25 you cannot afford to hire an attorney to help you prosecute the

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1 appeal, the Court will give you an attorney for free. There  
2 are time constraints on your ability to appeal so you should  
3 talk to your lawyer about that.

4 And, again, I want to thank the people in the audience  
5 who have been here to show their support for Mr. Araujo and all  
6 of your letters of support.

7 That is the sentence of the Court.

8 Are there any other applications by the government?

9 MR. CAPONE: No, your Honor.

10 THE COURT: Anything else by the defense?

11 MS. BEAMON: Your Honor, just could we also ask your  
12 Honor to recommend that Mr. Araujo be incarcerated in the  
13 northeast region of the Bureau of Prisons so that he can have  
14 access to the support of his family members?

15 THE COURT: OK. I will make that recommendation as  
16 well.

17 OK. Thank you very much.

18 MS. BEAMON: Thank you, your Honor.

19 MR. CAPONE: Thank you, your Honor.

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